UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/583,886	05/31/2000	Clare Grana	35605-00200	4389

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ART UNIT	. PAPER NUMBER
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DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2004*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6 and 11-22* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6 and 11-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. *022305,022405* .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas et al. (U.S. Patent No. 6,039,688) and Alabaster (U.S. Patent No. 6,553,386).

3.   Douglas renders obvious independent claim 1 by the following:

"...storing dietary information on a database..." at col. 9, lines 35-37 and col. 15, lines 11-14.

"...searching the dietary information database comprised of a menu/recipe database..." at col. 16, lines 53-55, col. 15, lines 11-15, and col. 9, lines 35-37.

"...a personal database..." at col. 7, lines 25-28 and col. 9, lines 35-37.

"...a nutritional database..." at col. 15, lines 11-14 and col. 9, lines 35-37.

"...and a medication database..." at col. 7, lines 28-31 and col. 9, lines 35-37.

"...to identify specific dietary information meeting user criteria..." at col. 15, lines 11-14 and col. 15, lines 26-29.

"...manipulating the information to provide a table of dietary information..." at col. 9, lines 65-67, col. 17, lines 65-67, col. 18, line 1, and col. 15, lines 11-14.

"...transmitting specific dietary information from said table of dietary information..." at col. 21, lines 66-67, col. 22, lines 1-2, col. 15, lines 11-14, col. 17, lines 65-67, and col. 18, line 1.

"...accessible to the user from the database over an internet..." at col. 14, lines 46-50, col. 9, lines 35-37, and col. 21, lines 19-21.

"...of the dietary information to the dietary information database..." at col. 15, lines 11-14 and col. 9, lines 35-37.

"...for access by future users..." is not considered to be a limitation since data is stored in databases for future access by the same user or other users.

"...over the internet..." at col. 21, lines 19-21.

Douglas does not teach the transmission of user assessments.

4.   However, Alabaster teaches the transmission of user assessments as follows:

"...and transmitting user assessments..." at col. 9, lines 18-22 and col. 7, lines 31-34.

It would have been obvious to one of ordinary skill at the time of the invention to combine Alabaster with Douglas to provide transmission of user assessments in order to provide feedback to the system and improve future dietary plans. Douglas and Alabaster teach the use of related systems. They teach the use of computers, the use of databases, the use of networks, the use of dietary information, the storing of data, the use of recipes, and the use of nutritional information. Douglas provides dietary information, recipes, personal information, nutritional information, medications, and access by the Internet and Alabaster provides transmission of user assessments.

5.   As per claim 16, the "...said user criteria comprises life stage data...," is

taught by Douglas at col. 15, lines 26-29 and col. 7, lines 25-28.

6.   As per claim 17, the "...said user criteria comprises dietary prescription

data...," is taught by Douglas at col. 15, lines 26-29, col. 15, lines 11-15, and col. 6,

lines 49-52.

7.   Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Douglas and Alabaster as applied to claim 1 above, and further in view of Sullivan et al.

(U.S. Patent No. 6,776,341).

As per claim 3, the "...manipulating the information further comprises...," is

taught by Douglas at col. 9, lines 65-67,

the "...and said table of information...," is taught by Douglas at col. 17, lines 65-67 and

col. 18, line 1,

but the "...evaluating the interaction between the dietary information and medication

information..."

and the "...includes drug/food contraindications...," is not taught by either Douglas or

Alabaster.

However, Sullivan teaches the evaluation of interactions between dietary

information and medications and drug/food contraindications as follows:

```
"...This information may be actual data, such as an expiration
date, National Drug Code, or lot number for the particular
medication, or may simply be an address that directs a user to
additional data located in a data base, including date of
manufacture, the identity and location of the manufacturer,
recommended dosage, dietary and related drug-usage information,
contraindications, and the recommended price of the medication..."
at col. 8, lines 9-16.
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It would have been obvious to one of ordinary skill at the time of the invention to combine Sullivan with Douglas and Alabaster to evaluate the interactions between dietary information medications and avoid medication and drug/food contraindications in order to provide medical personnel with information to prevent drug/food contraindications and gain better acceptance of the system within the medical community. Douglas, Alabaster, and Sullivan teach the use of related systems. They teach the use of computers, the use of databases, the use of networks, the use of dietary information, the storing of data, and the use of nutritional information and Douglas and Sullivan teach the use of medications. Douglas provides dietary information, recipes, personal information, nutritional information, medications, and access by the Internet, Alabaster provides transmission of user assessments, and Sullivan provides evaluation of interactions between dietary information to avoid medication and food contraindications.

8.   Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas and Alabaster as applied to claim 1 above, and further in view of Schroeder (U.S. Patent No. 5,787,186).

As per claim 11, the "...said user criteria...," is taught by Douglas at col. 15, lines 26-29,

but the "...comprises anthropometric data...," is not taught by either Douglas or Alabaster.

However, Schroeder teaches the use of anthropometric data as follows:

"...The computer determines the center point of the eyes and
measures the length and width and also the position of the eyes,
nose, mouth and chin, where applicable as anthropometric
parameters..." at col. 7, lines 52-55.

It would have been obvious to one of ordinary skill at the time of the invention to

combine Schroeder with Douglas and Alabaster to use anthropometric data in order to

provide positive identification of the patient and gain better acceptance of the system

within the medical community. Douglas, Alabaster, and Schroeder teach the use of

related systems. They teach the use of computers, the use of databases, and the use of

networks, and Douglas and Schroeder teach the use of personal information. Douglas

provides dietary information, recipes, personal information, nutritional information,

medications, and access by the Internet, Alabaster provides transmission of user

assessments, and Schroeder provides anthropometric data.

9.   Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Douglas and Alabaster as applied to claim 1 above, and further in view of Umbdenstock

(U.S. No. 5,332,579).

As per claim 12, the "...said user criteria...," is taught by Douglas at col. 15, lines

26-29,

but the "...comprises metabolic data...," is not taught by either Douglas or Alabaster.

However, Umbdenstock teaches the use of metabolic data as follows:

"...The enzyme co-factor of the nutritional supplement should
comprise water soluble Vitamins such as B Vitamins which
contribute to normalize cellular metabolic rates..." at col. 7,
lines 1-4.

It would have been obvious to one of ordinary skill at the time of the invention to combine Umbdenstock with Douglas and Alabaster to use metabolic data in order to provide information on how long medications remain in the human system and to help predict the impact of food eaten during the period that a medication remains in the human system. Douglas, Alabaster, and Umbdenstock teach the use of related systems. They teach the use of dietary information and the use of nutritional information. Douglas provides dietary information, recipes, personal information, nutritional information, medications, and access by the Internet, Alabaster provides transmission of user assessments, and Umbdenstock provides metabolic data.

10.   Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas and Alabaster as applied to claim 1 above, and further in view of Hankins (U.S. Patent No. 6,375,077).

As per claim 13, the "…said user criteria…," is taught by Douglas at col. 15, lines 26-29,

but the "…comprises food preferences data…," is not taught by either Douglas or Alabaster.

However, Hankins teaches the use of food preferences data as follows:

"…Thus, the system has inputted therein details of the user's food requirements or preferences…" at col. 4, lines 62-63.

It would have been obvious to one of ordinary skill at the time of the invention to combine Hankins with Douglas and Alabaster to provide food preferences in order to provide information on the likes and dislikes of patients to particular foods and to provide menus of foods that will be eaten by the patients. Douglas, Alabaster, and

Hankins teach the use of related systems. They teach the use of computers, the use of

databases, the use of networks, the use of dietary information, the storing of data, and

the use of nutritional information and Douglas and Hankins teach the searching for

information and the use of personal information. Douglas provides dietary information,

recipes, personal information, nutritional information, medications, and access by the

Internet, Alabaster provides transmission of user assessments, and Hankins provides

food preferences.

11.   As per claim 15, the "…said user criteria…," is taught by Douglas at col.

15, lines 26-29

and the "…comprises food allergies data…;" is taught by Hankins at col. 8, lines 40-44.

12.   Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Douglas and Alabaster as applied to claim 1 above, and further in view of Goldman et

al. (U.S. Patent No. 5,542,420).

As per claim 14, the "…said user criteria…," is taught by Douglas at col. 15, lines

26-29,

but the "…comprises health status data…," is not taught by either Douglas or Alabaster.

However, Goldman teaches the use of health status data as follows:

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"…However, with preparation, the subject may provide certain
health status information including age, weight, gender, and so
on.  Other data, as blood pressure, blood test results, urine
test results and so on will of course involve a health
professional as well as a testing laboratory…" at col. 11, lines
6-10.
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It would have been obvious to one of ordinary skill at the time of the invention to

combine Goldman with Douglas and Alabaster to provide health status data in order to

assist to medical professional in deciding which foods would be suitable for a patient.

Douglas, Alabaster, and Goldman teach the use of related systems. They teach the use

of computers, the use of databases, the use of networks, the use of dietary information,

the storing of data, and the use of nutritional information and Douglas and Goldman

teach the searching for information and the use of personal information. Douglas

provides dietary information, recipes, personal information, nutritional information,

medications, and access by the Internet, Alabaster provides transmission of user

assessments, and Goldman provides health status data.

13.   Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Douglas and Alabaster as applied to claim 1 above, and further in view of Longabaugh

(U.S. Patent No. 4,636,949).

As per claim 18, the "...said user criteria...," is taught by Douglas at col. 15, lines

26-29,

but the "...comprises cooking complexity data...," is not taught by either Douglas or

Alabaster.

However, Longabaugh teaches the use of cooking complexity data by the

following:

```
"...Since the person who programs the various cooking cycles into
the controller is usually not the same person who operates the
cooker, it is important that the controller have the capacity
for storing all the different cooking cycles that might be
needed and also be able to carry out cooking cycles of
sufficient complexity so that the optimum time/temperature
profile can be established for each of the products that it may
be desired to prepare..." ad col. 2, lines 19-27.
```

It would have been obvious to one of ordinary skill at the time of the invention to combine Longabaugh with Douglas and Alabaster to provide cooking complexity information in order to assist to dietary professional in estimating the cost of preparing given foods for patients. Douglas, Alabaster, and Longabaugh teach the use of related systems. They teach the use of computers, the use of networks, and the storing of data. Douglas provides dietary information, recipes, personal information, nutritional information, medications, and access by the Internet, Alabaster provides transmission of user assessments, and Longabaugh provides cooking complexity information.

14.   Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas et al. (U.S. Patent No. 6,039,688), Schroeder (U.S. Patent No. 5,787,186), and Umbdenstock (U.S. No. 5,332,579).

15.   Douglas renders obvious independent claim 4 by the following:

"...an internet..." at col. 21, lines 19-21.

"...a plurality of databases comprised of a menu/recipe database..." at col. 15, lines 11-15, and col. 9, lines 35-37.

"...a personal database..." at col. 7, lines 25-28 and col. 9, lines 35-37.

"...a nutritional database..." at col. 15, lines 11-14 and col. 9, lines 35-37.

"...and a medication database..." at col. 7, lines 28-31 and col. 9, lines 35-37.

"...operably connected to said internet..." at col. 21, lines 19-21.

"...and a computer operably connected to said plurality of databases via said internet..." in Figure 59.

"...said computer having a storage area..." is Figure 59.

"...wherein said computer searches said plurality of databases..." at col. 16, lines 53-55 and col. 9, lines 35-37.

"...to identify information relating to a plurality of factors as specified by a user of said computer..." at col. 15, lines 11-14 and col. 15, lines 26-29.

"...said databases transmit said identified information to said storage area of said computer via said intenet..." at col. 9, lines 35-37, col. 21, lines 66-67, col. 22, lines 1-2, col. 12, lines 35-39, and col. 21, lines 19-21.

"...and said computer manipulates said transmitted information to provide a summary of appropriate dietary information based on said plurality of factors..." at col. 9, lines 65-67, col. 21, lines 66-67, col. 22, lines 1-2, col. 15, lines 11-14, and col. 17, lines 52-55.

"...wherein said plurality of factors..." at col. 17, lines 52-55.

"...life stage..." at col. 7, lines 25-28.

"...and dietary prescription data..." at col. 15, lines 11-15 and col. 6, lines 49-52.

Douglas does not teach the use of anthropometric data and the use of metabolic data.

16.   However, Schroeder teaches the use of anthropometric data as follows:

"...include anthropometric..." at col. 7, lines 52-55.

It would have been obvious to one of ordinary skill at the time of the invention to combine Schroeder with Douglas to use anthropometric data in order to provide positive identification of the patient and gain better acceptance of the system within the medical community. Douglas and Schroeder teach the use of related systems. They teach the use of computers, the use of databases, the use of networks, the use of personal

information. Douglas provides dietary information, recipes, personal information,

nutritional information, medications, and access by the Internet and Schroeder provides

anthropometric data.

Schroeder does not teach the use of metabolic data.

17.   However, Umbdenstock teaches the use of metabolic data as follows:

"...metabolic..." at col. 7, lines 1-4.

It would have been obvious to one of ordinary skill at the time of the invention to

combine Umbdenstock with Douglas to use metabolic data in order to provide

information on how long medications remain in the human system and to help predict

the impact of food eaten during the period that a medication remains in the human

system. Douglas, Schroeder, and Umbdenstock teach the use of related systems. They

teach the use of dietary information and the use of nutritional information. Douglas

provides dietary information, recipes, personal information, nutritional information,

medications, and access by the Internet, Schroeder provides anthropometric data, and

Umbdenstock provides metabolic data.

18.   As per claim 5, the "...said server computer transmits a location in said

storage area...," is taught by Douglas at col. 21, lines 21-23, col. 21, lines 66-67, col.

22, lines 1-2, col. 11, lines 14-17, and col. 12, lines 35-39

and "...containing said dietary information to said user computer..." at col. 15, lines 11-

15 and col. 6, lines 20-22.

19.   As per claim 6, the "...said storage area comprises a personal data

question template...," is taught by Douglas at col. 12, lines 35-39, col. 7, lines 25-28,

and col. 13, lines 62-64.

20.   Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Douglas, Schroeder, and Umbdenstock as applied to claim 4 above,

and further in view of Hankins.

As per claim 13, the "...said user criteria...," is taught by Douglas at col. 15, lines

26-29,

but the "...comprises food preferences data...," is not taught by either Douglas,

Schroeder, or Umbdenstock.

However, Hankins teaches the use of food preferences data as follows:

```
"...Thus, the system has inputted therein details of the user's
food requirements or preferences..." at col. 4, lines 62-63.
```

It would have been obvious to one of ordinary skill at the time of the invention to

combine Hankins with Douglas, Schroeder, and Umbdenstock to provide food

preferences in order to provide information on the likes and dislikes of patients to

particular foods and to provide menus of foods that will be eaten by the patients.

Douglas, Schroeder, Umbdenstock, and Hankins teach the use of related systems.

They teach the use of dietary systems, Douglas, Schroeder, and Hankins teach the use

of computers, the use of databases, the use of networks, and the storing of data,

Douglas, Umbdenstock, and Hankins teach the use of personal information. Douglas

provides dietary information, recipes, personal information, nutritional information,

medications, and access by the Internet, Schroeder provides anthropometric data,

Umbdenstock provides metabolic data, and Hankins provides food preferences.

21.   As per claim 21, the "...said user criteria...," is taught by Douglas at col.

15, lines 26-29

and the "...comprises food allergies data...," is taught by Hankins at col. 8, lines 40-44.

22.   Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Douglas, Schroeder, and Umbdenstock as applied to claim 4 above, and further in view

of Goldman.

As per claim 20, the "...said user criteria...," is taught by Douglas at col. 15, lines

26-29,

but the "...comprises health status data...," is not taught by either Douglas, Schroeder,

or Umbdenstock.

However, Goldman teaches the use of health status data as follows:

```
"...However, with preparation, the subject may provide certain
health status information including age, weight, gender, and so
on.  Other data, as blood pressure, blood test results, urine
test results and so on will of course involve a health
professional as well as a testing laboratory..." at col. 11, lines
6-10.
```

It would have been obvious to one of ordinary skill at the time of the invention to

combine Goldman with Douglas, Schroeder, and Umbdenstock to provide health status

data in order to assist to medical professional in deciding which foods would be suitable

for a patient. Douglas, Schroeder, and Umbdenstock, and Goldman teach the use of

related systems. Douglas, Schroeder, and Goldman teach the use of computers, the

use of databases, the use of networks, the storing of data, the use of personal

information, and the use of nutritional information and Douglas, Umbdenstock, and

Goldman teach the use of dietary information. Douglas provides dietary information,

recipes, personal information, nutritional information, medications, and access by the

Internet, Schroeder provides anthropometric data, Umbdenstock provides metabolic

data, and Goldman provides health status data.

23.   Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Douglas, Schroeder, and Umbdenstock as applied to claim 4 above, and further in view

of Longabaugh.

As per claim 22, the "...said user criteria...," is taught by Douglas at col. 15, lines

26-29,

but the "...comprises cooking complexity data...," is not taught by either Douglas

Schroeder, or Umbdenstock.

However, Longabaugh teaches the use of cooking complexity data by the

following:

```
"...Since the person who programs the various cooking cycles into
the controller is usually not the same person who operates the
cooker, it is important that the controller have the capacity
for storing all the different cooking cycles that might be
needed and also be able to carry out cooking cycles of
sufficient complexity so that the optimum time/temperature
profile can be established for each of the products that it may
be desired to prepare..." ad col. 2, lines 19-27.
```

It would have been obvious to one of ordinary skill at the time of the invention to

combine Longabaugh with Douglas, Schroeder, and Umbdenstock to provide cooking

complexity information in order to assist to dietary professional in estimating the cost of

preparing given foods for patients. Douglas, Schroeder, Umbdenstock, and Longabaugh

teach the use of related systems. Douglas, Schroeder, and Longabaugh teach the use

of computers, the use of networks, and the storing of data. Douglas provides dietary

information, recipes, personal information, nutritional information, medications, and

access by the Internet, Schroeder provides anthropometric data, Umbdenstock provides

metabolic data, and Longabaugh provides cooking complexity information.

Response to Arguments

24.   Applicant's arguments filed 16 September 2004 have been fully

considered but they are not persuasive. In the first argument for claims 1, 3-6, and 11-

22 on page 6, paragraph 1, the Applicant states:

"Favorable consideration and allowance are respectfully requested for claims 1, 3-6, and 11-22. The amendment and cancellation of claims have been requested without prejudice to refile this subject matter in a continuation application. The previous submissions overcome the rejections and objections made in the December 24, 2002, Office Action."

The Examiner disagrees. Applicant's arguments with respect to claims 1, 3-6,

and 11-22 have been considered but are moot in view of the new ground(s) of rejection.

Prior art has been identified that meets the major limitations of this proposed invention.

Douglas et al. (U.S. Patent No. 6,039,688) teaches the use of a dietary database with

menu/recipe, personal, nutritional, and medication components and allows access to

this database over the Internet.

Conclusion

25.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Harold E. Dodds, Jr. whose telephone number is

(571)-272-4110. The examiner can normally be reached on Monday - Friday 8:00 -

4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John E. Breene can be reached on (571)-272-4107. The fax phone number

for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Harold E. Dodds, Jr.
Patent Examiner
March 8, 2005

Primary Examiner